

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain law enforcement agencies to establish a checkpoint to determine whether persons are boating while intoxicated.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. BOATING SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITION. In this chapter, "law enforcement agency" means an entity of the state or a political subdivision of the state that employs a peace officer who patrols the public waters of this state.

Art. 65.02. APPLICABILITY. This chapter applies only to:

(1) a law enforcement agency of a municipality with a population of 75,000 or more that:

(A) is located in a county with a population of 400,000 or more; and

(B) is adjacent to a lake:

(i) that is at least 20,000 acres;

(ii) that has at least 150 miles of shoreline; and

(iii) in which the municipality shares jurisdiction with at least three other municipalities located in the same county as the municipality, each of which has a population

1 of 25,000 or less;

2 (2) a law enforcement agency of a municipality  
3 described by Subdivision (1)(B)(iii);

4 (3) a county law enforcement agency that is operating  
5 within the jurisdiction of a municipality described by Subdivision  
6 (1) or (2); and

7 (4) a state law enforcement agency that is operating  
8 within the jurisdiction of a municipality described by Subdivision  
9 (1) or (2).

10 Art. 65.03. AUTHORIZATION FOR BOATING SOBRIETY  
11 CHECKPOINTS. A law enforcement agency may operate a temporary  
12 checkpoint as provided by this chapter to determine whether persons  
13 operating watercraft are intoxicated and in violation of Section  
14 49.06, Penal Code.

15 Art. 65.04. APPROVAL OF AND PROCEDURES FOR BOATING SOBRIETY  
16 CHECKPOINTS. (a) A peace officer of at least the rank of  
17 lieutenant or its equivalent in the law enforcement agency must  
18 approve the operation of a boating sobriety checkpoint by peace  
19 officers of the agency and the procedures to be used in the  
20 operation of the checkpoint before the checkpoint begins operation.

21 (b) The law enforcement agency must record in writing the  
22 procedures:

23 (1) used in selecting the site for the boating  
24 sobriety checkpoint; and

25 (2) to be used in the operation of the checkpoint.

26 (c) The procedures for the operation of a boating sobriety  
27 checkpoint must ensure that the selection of watercraft to be

1 stopped is reasonably predictable and nonarbitrary.

2 (d) The law enforcement agency, in establishing the  
3 location, time, and design of a boating sobriety checkpoint, shall  
4 consider the safety of the public subject to the checkpoint and the  
5 peace officers operating the checkpoint. The law enforcement  
6 agency shall make reasonable efforts to advise operators of  
7 oncoming watercraft of the checkpoint and the purpose of the  
8 checkpoint, to demarcate the checkpoint, and to illuminate the  
9 checkpoint as necessary.

10 (e) The peace officer who makes the initial communication  
11 with the operator of a watercraft at the boating sobriety  
12 checkpoint must be wearing a uniform of the law enforcement agency  
13 that is distinguishable from civilian dress.

14 (f) The law enforcement agency shall establish procedures  
15 governing the encounters between watercraft operators and the peace  
16 officers to ensure that:

17 (1) intrusion on the operator is minimized; and

18 (2) an inquiry is reasonably related to determining  
19 whether the operator is intoxicated and in violation of Section  
20 49.06, Penal Code.

21 (g) A peace officer may not direct the operator of or a  
22 passenger in a watercraft to leave the watercraft unless the  
23 officer has reasonable suspicion or probable cause to believe that  
24 the person has committed or is committing an offense. The design of  
25 a boating sobriety checkpoint may require that each watercraft  
26 subject to the checkpoint be diverted to a specific location to  
27 ensure safety.

1       (h) A peace officer at the boating sobriety checkpoint may  
2 not require a watercraft operator to perform a field sobriety test  
3 unless the officer has reasonable suspicion or probable cause to  
4 believe that the operator is in violation of Section 49.06, Penal  
5 Code. A peace officer who requires or requests an operator to  
6 provide a specimen of breath, blood, or urine must comply with  
7 Chapter 724, Transportation Code.

8       (i) Unless a peace officer has reasonable suspicion or  
9 probable cause to detain a watercraft operator or passenger for a  
10 criminal offense, the time during which an officer makes an inquiry  
11 of an operator or passenger should not exceed three minutes, and the  
12 total time during which the operator must wait to pass through the  
13 boating sobriety checkpoint should not exceed 10 minutes. The law  
14 enforcement agency shall make reasonable efforts to reduce these  
15 periods to not more than one and five minutes, respectively.

16       (j) The law enforcement agency shall publicize the  
17 operation of a boating sobriety checkpoint but is not required to  
18 disclose the precise date, time, location, or purpose of the  
19 checkpoint.

20       (k) A law enforcement agency may not operate a boating  
21 sobriety checkpoint at one location for more than four hours and may  
22 not operate a checkpoint at the same location more than twice in a  
23 seven-day period. This subsection does not apply in an emergency.

24       (l) A law enforcement agency shall keep a record of each  
25 operation of a boating sobriety checkpoint that contains:

26               (1) the date, time, location, and duration of the  
27 checkpoint;

1           (2) the number of watercraft stopped at the checkpoint  
2 and the number and nature of any arrests made or citations issued at  
3 the checkpoint; and

4           (3) the identities of the peace officers operating the  
5 checkpoint.

6           SECTION 2. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2007.